

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement	)	ORDER MODIFYING THE SWINE
Session Law 2007-397	)	AND POULTRY WASTE SET-ASIDE
	)	REQUIREMENTS AND PROVIDING
	)	OTHER RELIEF

BY THE COMMISSION: On August 11, 2017, a verified motion to modify and delay the 2017 requirements of G.S. 62-133.8(e) and (f) was filed by Duke Energy Carolinas, LLC (DEC); Duke Energy Progress, LLC (DEP); Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (Dominion); GreenCo Solutions, Inc.; Public Works Commission of the City of Fayetteville; EnergyUnited Electric Membership Corporation; Halifax Electric Membership Corporation; the Tennessee Valley Authority (TVA); the Town of Waynesville; North Carolina Eastern Municipal Power Agency (NCEMPA); and North Carolina Municipal Power Agency Number 1 (NCMPA1) (hereinafter referred to collectively as the Joint Movants).<sup>1</sup> The Joint Movants seek Commission approval of the following requests: 1) to delay the requirements of G.S. 62-133.8(e) (Compliance With [North Carolina's Renewable Energy and Energy Efficiency Portfolio Standard (REPS)] Requirement Through Use of Swine Waste Resources) until 2018; 2) to modify the requirements of G.S. 62-133.8(f) (Compliance With REPS Requirement Through Use of Poultry Waste Resources) by lowering the 2017 requirement to 170,000 MWh and delaying subsequent increases until 2018; 3) to allow Joint Movants "to bank any swine and/or poultry renewable energy certificates (RECs) previously or subsequently acquired for use in future compliance years;" and 4) to "allow Joint Movants to replace compliance with the poultry and swine waste requirements in 2017 with other compliance measures in accordance with G.S. 62-133.8(b), (c), and (d)." The Joint Movants state that they have individually and collectively made reasonable efforts to comply with the REPS swine and poultry waste resource provisions, and that the relief sought is in the public interest. In addition, Joint

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<sup>1</sup> DEC states that it is also acting in its capacity as REPS compliance aggregator for Blue Ridge Electric Membership Corporation (EMC), Rutherford EMC, the City of Dallas, the Town of Forest City, the City of Concord, the Town of Highlands, and the City of Kings Mountain. DEP states that it is acting in its capacity as REPS compliance aggregator for the Towns of Sharpsburg, Lucama, Black Creek, Winterville, and Stantonsburg. Dominion states that it is acting in its capacity as REPS compliance aggregator for the Town of Windsor. TVA states that it is acting in its capacity as REPS compliance aggregator for Blue Ridge Mountain EMC, Mountain Electric Cooperative, Tri-State EMC and Murphy Electric Power Board. NCEMPA asserts that it is acting in its capacity as REPS compliance aggregator for its 32 member municipalities, which are electric power suppliers. NCMPA1 asserts that it is acting in its capacity as REPS compliance aggregator for its 19 member municipalities, which are electric power suppliers.

Movants request that the Commission allow the current semiannual stakeholder meetings on compliance with the swine and poultry waste resource provisions to be held just once a year. Finally, the Joint Movants request that the Commission consider and approve their motion without an evidentiary hearing because they believe that through required semiannual reports and stakeholder meetings stakeholders and regulatory staff have ample information surrounding the Joint Movants' compliance efforts.

On August 31, 2017, the Commission issued an Order Requesting Comments. On September 22, 2017, the Commission granted a motion for an extension of time filed by the Public Staff, extending the deadline by which parties may file comments until September 29, 2017.

Between September 21, 2017 and September 29, 2017, the North Carolina Poultry Federation (NCPF), the North Carolina Pork Council (NCPC), and the Public Staff filed comments on Joint Movants' motion. No other party filed comments on the motion.

## SUMMARY OF THE COMMENTS

In its comments, NCPF states that it "does not oppose" the portion of the motion requesting to modify the requirements of G.S. 62-133.8(f) by lowering the 2017 compliance requirement to 170,000 MWh and delaying the subsequent increases in compliance requirements until calendar year 2018. NCPF limits its comments to the motion and its application to G.S. 62-133.8(f). Thus, NCPF takes no position with regard to banking poultry waste RECs and substituting other types of RECs for 2017 compliance purposes. In addition, NCPF stipulates and agrees that the Commission may enter an order on the motion on the basis of written submissions without the need for an evidentiary hearing. Finally, NCPF requests that the Commission "continue to monitor the process" and "continue to use its authority to motivate the parties to achieve compliance with the poultry waste set-aside as soon as practicable."

In its comments, NCPC also states that it does not oppose the Joint Movants' motion and that it has no reason to believe that good faith efforts are not being made toward compliance with the requirements of the animal waste provisions. Nevertheless, NCPC opines that it appears that the "industry as a whole" is relying on DEC and DEP to carry the burden of meeting these requirements. NCPC states that at some point soon, DEC and DEP and a few other electric power suppliers will be in a position to meet these requirements and the Commission will be called upon to decide how to address a situation where some electric power suppliers will have met their obligations but others have not. NCPC also makes reference to the Joint Motion's mention of recently enacted provision in House Bill 589 (S.L. 2017-192), establishing an accelerated interconnection for animal waste projects. NCPC sites this provision as a continued demonstration of the General Assembly's investment in the animal waste-to-energy set-aside requirements and the policy goals underlying these requirements. On that basis, NCPC argues that the Commission should "take such action as necessary to assure that this manifest legislative intent is carried out."

The Public Staff, in its comments, states that it has reviewed the motion, the semiannual reports, and the data in the North Carolina Renewable Energy Tracking System (NC-RETS). In addition, the Public Staff states that it has obtained useful information from the swine waste and poultry waste stakeholder meetings. The Public Staff's comments include a review of detailed data available in the triannual and semiannual reports filed with the Commission in Docket E-100, Sub 113A showing the approximate overall compliance position of the electric power suppliers. Based upon this review, the Public Staff concludes that the Joint Movants are making good faith efforts to comply with the swine and poultry waste set-aside requirements, but will fall short for 2017. Therefore, the Public Staff recommends that the Commission: (1) delay for one year the swine waste set-aside requirements; (2) modify the poultry waste set-aside requirements to maintain the current 170,000 MWh or equivalent for calendar year 2017 and delay all of the additional poultry waste set-aside compliance obligations for one year; (3) allow the electric power suppliers to bank any swine and poultry waste RECs previously or subsequently acquired for use in the future, exclusive of poultry waste RECs retired in 2014, 2015, 2016, and 2017; (4) allow the animal-waste set-aside requirements stakeholder meetings to be held once a year, during the summer; and (5) not require an evidentiary hearing on this matter.

## DISCUSSION

Pursuant to G.S. 62-133.8(i)(2), the Commission, in developing rules implementing the REPS, shall:

Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.

Commission Rule R8-67(c)(5) states:

In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions.

The Commission has previously exercised this authority and delayed compliance with the swine and/or poultry waste set-aside requirements on several occasions by the following orders issued in this docket: the November 29, 2012 Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Granting Other Relief (2012 Delay Order); the March 26, 2014 Final Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Providing Other Relief (2013 Delay Order); the November 13, 2014 Order Modifying the Swine Waste Set-Aside Requirement and

Providing Other Relief (2014 Delay Order); the December 1, 2015 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2015 Delay Order); the October 17, 2016 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2016 Delay Order).

As an initial matter, the Commission considers Joint Movants' request to consider and approve their motion without the need for an evidentiary hearing. In support of this request, Joint Movants state that the compliance status for the swine and poultry waste set-aside requirements is essentially unchanged since the Commission issued its 2015 Delay Order. The motion is verified by Kendal C. Bowman, Vice President of Regulatory Affairs and Policy, North Carolina, for Duke Energy Corporation, pursuant to Commission Rule R1-7 on behalf of the Joint Movants. The Public Staff, like the Joint Movants, recommends that the Commission approve the request without an evidentiary hearing. No party filed comments opposing this portion of the motion. Based upon the foregoing, the Commission finds that the material facts in this matter, including those contained in Joint Movants' verified motion and in the semiannual reports filed in Docket No. E-100, Sub 113A, are uncontroverted and concludes that the motion may be decided without an evidentiary hearing.

Based on the triannual and semiannual reports submitted by the electric power suppliers in Docket No. E-100, Sub 113A, the verified motion, the parties' comments, and the entire record herein, the Commission finds that the State's electric power suppliers have made a reasonable effort to comply with the 2017 statewide swine waste set-aside requirements established by G.S. 62-133.8(e), but will not be able to comply. Compliance with the swine waste set-aside requirement has been hindered by the fact that the technology of power production from swine waste continues to be in its early stages of development. No party presented evidence that the aggregate 2017 swine waste set-aside requirement could be met. However, the Commission notes that the electric power suppliers report encouraging developments in the technology of power production from swine waste that, combined with the availability of RECs banked from current and prior years, increase the likelihood that compliance with the swine waste set-aside requirements will be achieved in 2017. The Commission further notes that it has permitted the Joint Movants to bank RECs for four consecutive years and the cumulative effect of this banking has yet to result in the ability to comply with the initial swine waste set-aside requirement. To require that the Joint Movants retire their banked swine RECs would, thus, result in wiping the slate clean for compliance purposes in future years. Therefore, consistent with the 2016 Delay Order, the Commission finds that it is in the public interest to delay the entire requirement of G.S. 62-133.8(e) for one additional year. Electric power suppliers that have acquired swine waste RECs for 2017 REPS compliance should be allowed to bank such RECs for swine waste set-aside compliance in future years. Electric power suppliers should continue to make efforts to comply with the swine waste set-aside requirement as modified by this Order.

Based on the semiannual reports submitted by the electric power suppliers in Docket No. E-100, Sub 113A, the verified motion, the parties' comments, and the entire record herein, the Commission similarly finds that the State's electric power suppliers

have made a reasonable effort to comply with the 2017 statewide poultry waste set-aside requirement established by G.S. 62-133.8(f), but will not be able to comply. As with the swine waste set-aside requirement, compliance with the poultry waste set-aside requirement has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development. No party presented evidence that the aggregate 2017 poultry waste set-aside requirement could be met; however, the parties agree that the 2016 compliance level of 170,000 MWh, if maintained for 2017, can be met. Therefore, the Commission finds that it is in the public interest to modify the entire requirement of G.S. 62-133.8(f) for one year. Consistent with the 2016 Delay Order, the Commission finds good cause to modify the poultry waste set-aside requirement established by G.S. 62-133.8(f) by adding an additional year (2017) of compliance at the 170,000 MWh threshold, prior to escalating the requirement to 700,00 MWh. Electric power suppliers should continue to make efforts to comply with the poultry waste set-aside requirements as modified by this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the 2017 swine waste set-aside requirements of G.S. 62-133.8(e), as established in the Commission's 2016 Delay Order, are delayed for one additional year. The electric power suppliers, in the aggregate, shall comply with the requirements of G.S. 62-133.8(e) according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Swine Waste Resources</u>
2018-2019	0.07%
2020-2021	0.14%
2022 and thereafter	0.20%

Electric power suppliers shall be allowed to bank any swine waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine waste set-aside requirement in 2017 with other compliance measures pursuant to G.S. 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of G.S. 62-133.8(d);

2. That the 2017 poultry waste set-aside requirement of G.S. 62-133.8(f), as established in the Commission's 2016 Delay Order, is modified to maintain the same level as the 2016 requirement, and that the scheduled increases in the requirement are delayed by one year. The electric power suppliers, in the aggregate, shall comply with the requirements of G.S. 62 133.8(f) according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Poultry Waste Resources</u>
2016	170,000 MWh
2017	170,000 MWh
2018	700,000 MWh
2019 and thereafter	900,000 MWh;

3. That the electric power suppliers subject to the semiannual filing requirement shall continue to report on the schedule established in the 2015 Delay

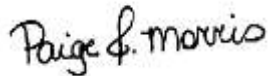
Order. These reports shall continue to include the information specified in Ordering Paragraph 3 of the Commission's 2015 Delay Order; and

4. That the Public Staff shall continue to arrange and facilitate stakeholder meetings, but may reduce the frequency of these meetings to once a year to occur in the summer months. The electric power suppliers subject to the semiannual filing requirement shall attend. Developers and other stakeholders are encouraged to participate and discuss potential obstacles to achieving the swine and poultry waste set-aside requirements. The Public Staff shall continue to file minutes of the stakeholder meetings in Docket No. E-100, Sub 113A.

ISSUED BY ORDER OF THE COMMISSION.

This the 16<sup>th</sup> day of October, 2017.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Paige J. Morris". The signature is written in a cursive, slightly slanted style.

Paige J. Morris, Deputy Clerk